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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 224 OF 2024**

M/s. Welfare Properties Private Limited ... Appellant

Vs.

Suresh Kunalal Awasthi and Others ... Respondents

Mr. Shanay Shah a/w. Mr. Ameet Mehta, Mr. Nirav Marjadi, Ms. Srushtii Mehta and Mr. Kushal Harnesha i/b. Solicis Lex for the Appellant.

Mr. Shrey Fatterpekar i/b. Mr. Jay Vakil for Respondent No. 7.

CORAM : GAURI GODSE, J.

DATE : 3rd MARCH 2025

ORDER :

1. Heard learned counsel for the appellant. This appeal is preferred by the plaintiff to challenge the rejection of the prayer for interim relief of injunction in a suit for simplicitor injunction. The appellant is original plaintiff who filed suit for injunction restraining the owners of the property from creating third party rights. The appellant is claiming through defendant no. 7 -society on the ground that the society has executed registered redevelopment agreement in favour of the appellant.

2. Learned counsel for the appellant submits that the owners have not challenged the redevelopment agreement. They did not dispute receipt of amount of Rs. 66 lakhs paid by way of part consideration based on the negotiation with the owners. He submits that the amount is admittedly received by the owners in view of the proposed conveyance deed to be executed by the owners. Hence, according to the learned counsel for the appellant, the plaintiff would be entitled to seek injunction restraining the owners from creating third party rights.

3. I have perused the papers of the appeal. The suit is filed based only on the registered agreement for redevelopment executed by the society. There is no prayer for any declaration or specific performance of any agreement executed by the owners of the property. In the impugned order the learned Judge of the City Civil Court has referred to the payments made by the appellant to the owners. The contention of the owners is also recorded about the dispute raised on the terms and conditions of the proposed conveyance deed and the total consideration amount.

4. The society though has executed a registered redevelopment agreement, nothing is placed on record to indicate that the necessary procedure under the provisions of the Maharashtra Co-

operative Societies Act, 1960 ["MCS Act"] is undertaken. Learned counsel for the appellant submitted that the controversy regarding the proceedings under the provisions of the MCS Act, was not raised in the suit.

5. There is no dispute that the amounts paid by the plaintiff is recorded in the impugned order as paid to defendant nos. 1 and 2. The learned Judge has therefore held that in the absence of any concluded contract with the owners, the plaintiff would not be entitled to seek injunction against the owners of the property. The owners of the property have also brought on record the dispute between defendant nos. 1 to 5 and defendant nos. 6 and 7. The impugned order indicates that there is dispute between defendant nos. 1 to 5 and defendant no. 6 in respect of the lease document executed by the predecessor in title of defendant nos. 1 to 5. There are proceedings pending against defendant no. 6 in the Small Causes Court.

6. In view of these facts, the learned Judge of the City Civil Court has refused to grant an order of injunction. The learned Judge has also recorded in the impugned order that the redevelopment agreement executed by the society is not registered.

7. Learned counsel for the appellant submits that after the

impugned order, the redevelopment agreement is registered. Learned Judge has considered all the relevant aspects for deciding the application under Order XXXIX Rule 1 of the Code of Civil Procedure for grant of injunction. Grant of injunction is a discretionary order which can be passed based on satisfaction of the parameters for granting temporary injunction during the pendency of the suit. Admittedly, there is no substantive suit filed for declaration or specific performance by the plaintiff. Hence considering all the aspects of the dispute, learned Judge of the City Civil Court has refused to exercise discretionary power to grant injunction on the ground that none of the parameters are satisfied.

8. In view of the aforesaid facts, I do not see any fault in the reasons recorded in the impugned order.

9. The appeal is devoid of any merits. Hence appeal is dismissed.

[GAURI GODSE, J.]